HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.15074 of 2007

Date 10-8-2007

Between:
P. Narsinga Rao and others.

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PETITIONERS

AND

The Government of A.P.,
Rep. By its Special Chief Secretary,
Energy (Services) Department,
Secretariat, Hyderabad and others.

…..RESPONDENTS

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.15074 of 2007

ORDER: (per Smt. T.Meena Kumari,J)

The petitioners filed the present writ petition seeking a writ of Mandamus to declare the impugned Memo No. 1858/Ser/2005, dated 30.5.2007 and the order of the A.P. Administrative Tribunal made in O.A. No. 3331 of 2007,dated 18.6.2007 as illegal, arbitrary and unjust.

The brief facts of the case are that the petitioners herein were appointed as Assistant Electrical Inspector during the month of March, 1993 and some of them were subsequently promoted as Deputy Electrical Inspectors. While so, the 3rd respondent herein was appointed as Assistant Electrical Inspector during the month of March, 1993 subsequent to the petitioners and his probation was regularized on 26.3.1993. Petitioners also alleged that the 3rd respondent did not pass the relevant departmental tests between 26.3.1993 and 26.3.1995. However, when the third respondent got involved in an ACB case, he was suspended from service on 19.7.1995. Subsequently, after acquittal in the criminal, he was reinstated into service. The 2nd respondent while invoking the powers of Rule 16(h) of the A.P. State and Subordinate Service Rules issued revised date of regularization from 29.8.1998 and declared the probation on 15.11.2000. Assailing the same, the 3rd respondent filed O.A. No. 726 of 2005 before the Tribunal without impleading them as parties. The Tribunal while allowing the said O.A. in part directed the respondent authorities to reconsider the case of the 3rd respondent regarding fixation of date of

commencement of probation and pass necessary orders within a period of four weeks from the date of communication of the said order. The 1st respondent, thereafter, issued the impugned Memo dated 30.5.2007 relaxing the Rule 16(h) of A.P. State and Subordinate Service Rules in favour of the 3rd respondent herein and regularized his services from the date of his appointment, i.e. from 26.3.1993. Aggrieved by the same, the petitioners herein filed O.A. No. 3331 of 2007 before the Tribunal. The Tribunal, by the order impugned in this writ petition, dated 18.6.2007 while admitting the said O.A. granted interim order directing that any order of promotion passed in pursuance of the impugned orders shall be subject to the result of the O.A.

Learned counsel for the petitioner would contend that the respondents issued the impugned memo dated 30.5.2007 without issuing any notice and opportunity of hearing to the petitioners. He further submitted that by virtue of the impugned memo the respondents are also trying to give promotion to the 3rd respondent, who is junior to the petitioners. He further submits that in view of the fact that the impugned memo dated 30.5.2007 was passed by the 1st respondent relaxing Rule 16(h) of the rules, without giving any notice and opportunity of hearing to the petitioners and other affected parties, the same would be violative of principles of natural justice. In support of this contention, he relied on the decision of the Apex court in N.K. DURGA DEVI vs. COMMISSIONER OF COMMERCIAL TAXES, HYDERABAD & OTHERS ([1]). He, therefore, prayed that the writ petition be allowed and the impugned orders be set aside.

Learned Government Pleader for Services-I, on the other hand opposed the said contentions and submitted that the petitioners have not questioned the order of the Tribunal made in O.A. No. 726 of 2005 and the same has become final. He would further submit that in the said order, the Tribunal only directed the respondents to consider the case of the 3rd

respondent and it did not pass any order. Pursuant to the order of the Tribunal, the 1st respondent issued the impugned memo relaxing Rule 16(h) of the A.P. State and Subordinate Service Rules in favour of the 3rd respondent. He, therefore, prayed that the writ petition be dismissed.

In N.K. DURGA DEVI's case cited supra, the Apex Court observed thus:

> "A relaxation order which affects rights of third parties, if passed in violation of the principles of natural justice and without giving a hearing to the affected parties would be void, or in any event, unenforceable in law."

Admittedly, the 1st respondent did not issue any notice to the petitioners before issuing the impugned memo dated 30.5.2007. Therefore, keeping in view the aforesaid decision of the Supreme Court in N. K. Durga Devi's case, we are of the opinion that the respondent authorities ought to have issued notice to the petitioners, who are the affected parties before issuing the impugned memo dated 30.5.2007 relaxing rule 16(h) of the rules retrospectively.

Under the circumstances, we are inclined to modify the impugned order dated 18.6.2007 of the Tribunal made in O.A. No. 3331 of 2007. Accordingly, the impugned order dated 18.6.2007 passed by the Tribunal in O.A. No.3331 of 2007 is set aside. Instead we direct the respondent authorities to issue notice to the petitioners, who are the affected parties within a period of eight weeks from the date of receipt of a copy of this order. If such a notice is issued the petitioners, the petitioners are entitled to raise all their objections, which were raised in this writ petition before the respondent authorities. On such objections being filed by the petitioners, the respondents shall consider and dispose of the same within a period of four weeks thereafter in accordance with the rules.

The writ petition is accordingly disposed of. No costs.

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(T. MEENA KUMARI,J)

Date: 10th August, 2007

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(G. CHANDRAIAH,J)

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[1] (1997)II SCC 91